UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1167
30 October 1996

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1167th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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GE.96-17799 (E)

The meeting was called to order at 3.10 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Methods of work of the Committee

1. The CHAIRMAN invited the experts to comment on draft chapter III of the Committee's report to the General Assembly (in-session document with no symbol, in English only) dealing with the Committee's methods of work, which might be reviewed annually under the same chapter.

2. Mr. GARVALOV, agreeing with the principle of such a review, asked whether its purpose was to inform Member States about the Committee's methods of work or to provide them with an analysis of the Committee's own position on its work. Member States would be familiar with the Committee's methods of work and if the intention was to provide an analysis, the Committee should perhaps expand a little on the results it had obtained.

3. As already pointed out by Mr. Aboul-Nasr, the text was silent on the application of article 15. That was certainly a very important question of principle, but the Committee could not be charged with laxity, since it did not have the information needed to take action.

4. There were other weaknesses in the draft: the part dealing with early-warning measures and urgent procedures was too short, and nothing was said about communications transmitted by the Committee through the High Commissioner for Human Rights to the Secretary-General, the General Assembly and the Security Council when very urgent matters arose. There was no reference, moreover, to the evaluation of the early-warning procedures already made by those three authorities; the States parties to the Convention and the States Members of the United Nations were entitled to know the results of that evaluation. The draft also gave no information on coordination between the activities of the Committee and those of other United Nations bodies, in particular the Sub-Commission, although the Secretary-General had issued an appeal on that subject, which had been endorsed by the World Conference on Human Rights at Vienna and reiterated in resolutions of the General Assembly.

5. In paragraph 12, furthermore, the concluding observations were presented as being a collective opinion of the Committee. In fact, that was not always the case and any expert could decide not to join in the consensus on the concluding observations. It would therefore be preferable to omit that description. Paragraph 15 said that some States lacked the political will to comply fully with their reporting obligations. Even if the solution was in the hands of the States themselves, that was a failing on which the Committee had a duty to express its views firmly without, of course, closing the door to dialogue. In that regard, a distinction should be made between delays in reporting and non-submission of an initial report. Even if they had some excuses, the States in question were not, after all, in situations like Somalia or Burundi. He proposed that if the Committee decided to recommend to the General Assembly that it specify by name those States parties which were late in submitting their periodic reports, it should do the same for those which had not even sent their initial reports.

6. The CHAIRMAN suggested that the solution proposed earlier by Mr. Aboul-Nasr concerning reports that were long overdue should be applied also to States which had not submitted an initial report. In view of the fact that their excessive delay in reporting prevented it from discharging its treaty obligations, the Committee would invite them to provide information and take part in the discussion, and would point out to them that, in the absence of any response on their part, it would nevertheless examine their situation in regard to the Convention. If a State, basing itself on the terms of the Convention, objected to such an examination, the Committee would not pursue the matter.

7. Mr. ABOUL-NASR said that article 9 of the Convention was very explicit: the Committee had to work on the basis of the information given by the State party when considering the situation in that State, although it could seek additional information from other sources. Even an examination based on study of the core document could be undertaken only with the State's agreement.

8. Mr. GARVALOV said that if a State party declared that the core document should be considered as a report, the Committee could hardly object, but he doubted whether such a document could give it the information it required for proper consideration of the implementation of the Convention by that State.

9. Mr. van BOVEN said that there was a gap in the Convention since its drafters had not allowed for the case in which States parties might not cooperate with the Committee. The Committee should be creative in filling that gap and seek the information it needed in reports that the States concerned might have submitted to other bodies, such as the International Labour Organization, or under the Covenants or other conventions. It was inadmissible that the Committee should have to forgo consideration of the situation of States parties that had not even sent a single report.

10. Mr. WOLFRUM said that, whatever the difficulties involved, a State party was required to report to the Committee at regular intervals. It was a rule of law, moreover, that those who broke the law must not gain advantage from their omissions. A way therefore had to be found, without condemning the defaulting States, to convince them to enter into a dialogue with the Committee.

11. Mr. RECHETOV observed that a State not submitting an initial report risked becoming the subject of an early-warning procedure. It could be supposed that a State which had neglected to submit such a report had not established the requisite legislative basis to deal with racial discrimination under its criminal law, or the mechanisms for applying the Convention or measures of legal protection against racial discrimination.

12. He would provide written comments on the draft to the secretariat, but wished to point out orally that while reports were often not sent regularly, they were submitted one day or another. That point must not be ignored. However, the Committee should indicate in the document that a large number of States which had ratified the Convention were doing little to apply it; that they were nevertheless required to do so, even if they believed they could say that no racial discrimination existed in their territories; that they should not simply present their constitutions and legislation in their reports, but

should also describe the specific effects of the application of those instruments; and, lastly, that not only the United States, but also France and a number of other States had made reservations which they should be encouraged to withdraw.

13. A very important procedure not mentioned in the document under discussion concerned the communication that a State party could transmit to the Committee when it considered that another State party was not giving effect to the provisions of the Convention (art. 11 of the Convention). The fact that States were not applying that procedure showed how far human rights were politicized.

14. Lastly, paragraph 12 of the document stated that the Committee adopted its concluding observations by consensus. He did not believe that was the case: it adopted them without a vote, but there was nothing in the rules of procedure to the effect that the Committee should adopt its concluding observations by consensus.

15. Mr. SHAHI asked how many countries had not submitted an initial report but only a core document, and how many had submitted neither an initial report nor a core document. He thought, like Mr. Aboul-Nasr and Mr. van Boven, that when a country had submitted a core document, the Committee could consider that document with the help of the information contained in other documents submitted to other treaty bodies. But what was the Committee to do when there was neither an initial report nor a core document?

16. The CHAIRMAN replied that eight States were more than five years late in submitting their initial reports. Other initial reports were also overdue, but by less than five years. The secretariat would ascertain whether any of those States parties had submitted a core document, which constituted the first part of a report.

17. Mr. ABOUL-NASR said that he associated himself with Mr. Rechetov's comments on the document before the Committee. His position was that the Committee could consider a report - whatever its title - from a State party provided that the State party agreed to its examination by the Committee as a report submitted under article 9 of the Convention. The Committee could not oblige but only request a Member State to prepare a report of a particular kind. Another point to be borne in mind was that the Committee was not a court of law. It examined reports, not situations, and could make suggestions and recommendations based on that examination (art. 9, paras. 1 and 2, of the Convention).

18. Furthermore, he wished to draw the attention of the members of the Committee to the last sentence of article 9, paragraph 2, which stated that the Committee's "suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States parties". Had the decisions taken by the Committee, at the current session or previous sessions, been communicated to the States parties? Had their comments been included in the Committee's report to the General Assembly? He did not think so. Lastly, he did not see how not submitting a report might be to the "advantage" of a State party, as suggested by Mr. Wolfrum.

19. Mr. WOLFRUM, answering Mr. Aboul-Nasr, pointed out that if a State party had not submitted an initial report and if, therefore, the Committee concluded that it could not discuss the application of the Convention in the State concerned, that State would find itself in a better position than some other States which had submitted reports and had been criticized by the Committee. In his view, a State which did not comply with article 9 should not escape the Committee's scrutiny on that account.

20. It could not, in fact, be said that the Committee had neglected the obligation to report "comments, if any, from States parties" to the General Assembly as no State had thus far taken the care to formulate such comments.

21. The CHAIRMAN pointed out that, since the drafting of the text in question, the Committee had established the procedure of inviting a State to send representatives to present its report to the Committee and to respond to the members' questions and comments.

22. Mr. de GOUTTES said that, in principle, he was in favour of the document under discussion, which reviewed the achievements of the Committee in regard to methods of work and made those methods transparent for the Committee's partners. It bore the hallmark of the Committee's "prudent boldness", which consisted in remaining faithful to the text of the Convention and its terms of reference, while drawing from the Convention all the strength possible in regard to States' obligations (including the recommendation on sources of information, preventive measures and urgent procedures).

23. Additional mention could be made of complaints from States, as proposed by Mr. Rechetov, and of trust territories, as proposed by Mr. Aboul-Nasr. For his part, he would like the document to include the Committee's 1990 recommendation on the independence of the experts, as well as a reference to the practice of the neutrality of the expert who was a national of the country whose report was being examined. In the section concerning relations with other international bodies, he would like reference to be made to meetings of the Committee with the Sub-Commission.

24. Mr. DIACONU said he hoped that the few pages devoted to the Committee's methods of work would be included in its report to the General Assembly only in 1996: repeating them every year would be a waste of time. The idea of complaints based on article 11 of the Convention was, in his view, out of date. No State had ever availed itself of that possibility and today human rights were no longer a matter of conflict between States, but a concern of the international community as a whole.

25. The Convention required the Committee to work on the basis of the reports submitted by the States parties. What was the Committee to do when a State party had not submitted an initial report? If the State party in question had submitted a core document, that showed a willingness on its part to have its reports considered by at least one treaty body. In that case, the State concerned merely had to be requested to report to the Committee on the Elimination of Racial Discrimination. In the opposite case, the Committee could, for example, ascertain whether the country had reported to other United Nations committees or bodies, or contact the country's delegation at

the General Assembly. The Committee could also submit a separate document, besides the report, to the General Assembly; it would list the countries that had not submitted reports and would be issued as a document of the General Assembly under the relevant agenda item. He did not think, however, that the Committee could consider the implementation of the Convention in any particular country in the absence of a report: that was not within the Committee's terms of reference.

26. Mr. GARVALOV said that, as he understood it, the Committee's report would from now on reproduce only its concluding observations relating to the examination of States' reports, and not the views expressed by States during that examination. That would be a very serious omission, and the Committee should be aware of the fact. He shared the opinion of Mr. de Gouttes concerning the neutrality of the experts, as well as Mr. Diaconu's view that the Committee's report should be brought directly to the attention of the General Assembly, without going through the Third Committee. The best solution, as he had himself suggested earlier, might be to inform the Secretary-General directly of the main points in the Committee's report that required not only urgent action but analysis.

27. Mr. CHIGOVERA said that he wondered how many points - such as those regarding the Committee s methods of work - could be added to the report, and how long it should be. There already appeared to have been some innovations in the terms of reference set forth in article 9 (information from other sources, early-warning measures, urgent procedures, preventive procedures). In his view, the Committee sometimes had to interpret the Convention. It might, therefore, consider the situation in a country that was not fulfilling its reporting obligations under the Convention.

28. He would like the secretariat to prepare a draft text taking account of all the comments that had been made. The Committee could then consider it paragraph by paragraph.

29. Mr. AHMADU observed that reports by Member States were becoming increasingly rare and that some States had thus far not even submitted their initial reports. Moreover, the Committee on the Elimination of Racial Discrimination was not the only body concerned, as other United Nations committees found themselves in the same position. The problem was perhaps partly to be explained by the way in which the Committee considered the reports. It had been reproached, for example, with acting like a criminal court and with interfering in States' internal affairs. There were two ways of proceeding. The Committee could consider requesting the Secretary-General of the United Nations to take sanctions against countries not fulfilling their obligations - for example, preventing them from voting in the General Assembly or from participating in its work. Another solution might be for the Committee to be less demanding and put itself more in the place of the country whose situation was being considered.

30. The CHAIRMAN said that it would be difficult to impose sanctions, and in any event that was not the Committee's role.

31. Mr. WOLFRUM said that the Committee appeared to have largely exhausted the question and it was perhaps time to close the discussion. He would,

however, like the report to the General Assembly to indicate the sources used by the Committee and whether or not reference would be made to documents from non-governmental organizations. That would give States parties and non-governmental organizations an idea of how the Committee worked. Some States might not be reporting on time because they were overburdened. Despite the drawbacks, the submission of a single report to all the treaty bodies was perhaps the solution.

32. Mr. VALENCIA RODRIGUEZ pointed out that, in so far as overdue initial reports were concerned, article 9 of the Convention was clear. In that regard, the Committee was not empowered to change the Convention, but could interpret it when a procedural problem arose. The best course of action under the circumstances was to inform the General Assembly that as from the next session the Committee intended to notify States which had not yet submitted an initial report that, in the absence of such a report, it would consider their situation on the basis of reports submitted by them to other United Nations bodies and on studies prepared by the United Nations services. It was out of the question, however, to refer to documents originating from non-governmental organizations for that purpose. In its report to the General Assembly, the Committee could include a list of the States concerned. As the latter were Members of the United Nations, the General Assembly might adopt a reoslution approving the course of action followed by the Committee.

33. Mr. ABOUL-NASR said that in general he supported the solution proposed by Mr. Valencia Rodríguez and agreed with him that the Committee must avoid using sources other than Member States' reports and United Nations documents for the simple reason that the validity of outside sources was not recognized by all members of the Committee and that some of them were biased. Some members referred to the reports of the United Nations Department of State, but he wondered whether it was appropriate to make use of information provided by one Member States to examine the situation in another.

34. Mention had been made in the discussion of the experts' neutrality. That concept made no sense in the context of the Committee's work. Article 8 of the Convention spoke of "impartiality" and the Committee must apply that criterion.

35. Mr. de GOUTTES agreed that he had not used the right word in speaking of neutrality. It was the idea of impartiality that he had actually had in mind when expressing the wish that the report should mention the practice whereby the expert would not intervene in a discussion devoted to the consideration of the situation in his own country.

36. Mr. RECHETOV, referring to Mr. Wolfrum's comments, said that the Committee was an independent body and that the experts serving on it were appointed in their personal capacity. Some held that, because of their status, the experts must not take part in the consideration of the report of the State of which they were nationals. He did not agree with that view, which to him seemed contrary to the provisions of the Convention. As well as the criterion of impartiality, there was the fact that the experts represented different legal system and civilizations. Their non-participation in the consideration of the report concerning their country would deprive the

Committee of their valuable expertise. As long as the discussion was open, no one could doubt the impartiality of the experts, and it was actually their non-participation in the discussion that might be interpreted as a sign of dependence vis-à-vis their Government.

37. Mr. de GOUTTES, speaking in exercise of the right of reply, said that he did not agree with Mr. Rechetov's interpretation of article 8, paragraph 1. Impartiality was a fundamental obligation that the expert had to show in all circumstances. The principle of the representation of different forms of civilization and different legal systems was, on the other hand, simply a criterion to be taken into account in the election of members of the Committee. Those were two quite distinct concepts.

38. Mr. YUTZIS said he had the impression that the Committee was wasting its time. The discussion would have been more fruitful if each member had submitted his or her proposals in writing and if the report had then been considered paragraph by paragraph. Unless members of the Committee had something new or different to add, or what they wanted to say could not be submitted in writing, he proposed tht the Committee should move on to the next agenda item.

39. Mr. LECHUGA HEVIA said that, while agreeing with the proposal of Mr. Valencia Rodriguez, he wished to point out that the reports submitted by States parties to other treaty bodies - documents on which it was proposed that the Committee should base itself in order to consider the situation in countries that had not submitted initial reports - did not deal directly with the question of racial discrimination and therefore might not be very useful to the Committee.

40. Mrs. ZOU said that the Committee had devoted too much time to exchanges of views on general issues and it would have been more useful to examine the draft text item by item. The comments made by members of the Committee would then have been more focused.

41. The CHAIRMAN said that a new version of the document under consideration would be prepared. If he heard no objection, he would take it that the Committee wished to adjourn the discussion of the text.

42. It was so decided.

Programme of work of the Committee

43. The CHAIRMAN invited the members of the Committee to decide on the programme of work for the next meeting, in view of the fact that the consideration of the reports of Namibia and Venezuela had been postponed until the following afternoon.

44. After a discussion in which Mr. CHIGOVERA, Mr. DIACONU, Mr. WOLFRUM, Mr. GARVALOV, Mr. YUTZIS, Mr. ABOUL-NASR and Mrs. SADIQ ALI took part, Mr. van BOVEN said that he was prepared to present what might be considered as a report on the situation in Bosnia and Herzegovina. Regarding Israel, however, it was inappropriate in his view to consider the application of the Convention in that country without a report containing the specific

information requested by the Committee. The Committee might also consider communications, if the secretariat was ready, or the working paper prepared by the Chairman in connection with the meeting of persons chairing the international human rights treaty bodies.

45. Mr. RECHETOV said that he agreed with Mr. van Boven regarding the consideration of implementation of the Convention in Israel. Bearing in mind the importance of that country and the problems with which it might be confronted in the future, in particular owing to its mono-ethnic character, it would be inadvisable to consider the situation if no report was available and a delegation was not present.

46. Mr. YUTZIS said that, in view of the urgency and complexity of the situation in Burundi, the Committee might request further information from the Special Procedures Branch of the Centre for Human Rights, which was monitoring the situation on a day-to-day basis.

47. Mr. de GOUTTES, supported by Mr. WOLFRUM, pointed out that the High Commissioner for Human Rights had provided up-to-date information on Burundi a week earlier and the Committee had adopted a recommendation concerning that country. However, there was no reason why the Committee should not again contact Mr. Ayala Lasso, as the High Commissioner had himself suggested, to find out the latest developments concerning Burundi.

48. Mr. ABOUL NASR said that the Committee should not consider the report of a State party, even under the urgent procedure, without the State concerned having been informed.

49. Answering a question from Mr. SHAHI, Mr. HUSBANDS (Secretary of the Committee) said that the Committee's recommendation concerning Burundi and the letter accompanying it had been transmitted on the same day as the adoption of the recommendation to the officer-in-charge of the International Instruments Branch for communication to the Assistant Secretary-General for Human Rights and the High Commissioner for Human Rights.

50. Mr. SHAHI said that he did not understand why the Committee could not send a letter directly to the Secretary-General under the urgent procedure, as had been its practice before the institution of the post of High Commissioner for Human Rights.

51. Mr. WOLFRUM noted that, under the terms of article 9 of the Convention, the Committee could communicate directly with the Secretary-General of the United Nations.

52. Mr. GARVALOV said that no reservation of any kind vis-à-vis the High Commissioner for Human Rights or the Assistant Secretary-General for Human Rights must be construed in the fact that the Committee wished to approach the Secretary-General directly.

53. Mr. van BOVEN pointed out that the Secretary-General of the United Nations had a dual function: on the one hand, he was the administrative head of the United Nations Secretariat; and, on the other hand, he had a political role, particularly in regard to activities concerning the

Security Council. The Committee could approach the Secretary-General directly in his political capacity, but when communicating with him as head of the administration, it should go through the appropriate channels. Clearly, with regard to the recommendation on Burundi, the Committee wished to approach the Secretary-General directly in his political capacity.

54. Mr. ABOUL-NASR said that the Secretary-General could not possibly take note of the vast number of communications sent to him every day. It therefore seemed appropriate, in his view, that the Committee should approach him through the Assistant Secretary-General for Human Rights, for example, and no form of censure could be seen in that procedure.

55. The CHAIRMAN said that, at its next meeting, the Committee would therefore consider the situation in Bosnia and Herzegovina, then communications, and lastly the working paper he had prepared in connection with the meeting of persons chairing the international human rights treaty bodies.

56. Mr. SHAHI, supported by Mr. CHIGOVERA, said that for the purpose of adopting its concluding observations after the consideration of a State party's report, the Committee must have the text of those observations in all the working languages, as well as the text of the summary records of the meetings at which the report in question had been considered.

57. The CHAIRMAN pointed out that the summary records of meetings were prepared alternately in English and in French.

The meeting rose at 5.40 p.m.